IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

OSA No. 20 of 2001.

Reserved on: 13.4.2007

Date of decision: 20.4.2007

Punjab National Bank .... Appellant

Versus

M/s B.R. Enterprises & Ors. ... Respondents

Coram :

The Hon'ble Mr. Justice V.K. Ahuja, Judge.

The Hon'ble Mr. Justice Kuldip Singh, Judge.

Whether approved for reporting?[1] No.

For the appellant: Mr. Ajay Kumar, Advocate.

For the respondents: Mr. Ashwani K. Sharma, Advocate, for respondents No. 1 to 3(B).

Mr. B.M. Chauhan, Advocate, for respondent No. 4.

Per V.K. Ahuja, J.:

This is an appeal filed by the appellant against the judgment and decree of the learned Single Judge dated 17.11.1997, vide which the learned Single Judge disposed of the suit without deciding the suit on merits.

Briefly stated the facts of the case are that the appellant as plaintiff filed a suit for recovery of Rs.5,11,000/ along with cost and future interest at the rate of 18.50% per annum from the date of suit till realization. Respondents No. 1 and 2 filed a case before the Consumer Forum against respondents No. 4 and plaintiff/bank and a sum of

[1]Whether reporters of Local Papers may be allowed to see the judgment? Yes

Rs.5,28,000/- was awarded in favour of respondents No. 1 and 2 and as against respondent No. 5. Defendant No. 5 i.e. the Insurance Company deposited a sum of Rs.5,28,000/- on 15.7.1997 with Consumer Disputes Commission at Shimla.

The plaintiff/bank moved an application before the learned Single Judge for attachment of the amount deposited with the H.P. Consumer Commission. The Hon'ble Court ordered the attachment of the amount vide its order dated 17.11.1997 that the said amount shall be deposited with the plaintiff/bank. However, while passing the order for the attachment of the amount, the Court directed that the said amount is for full and final settlement of their claim in the present suit and disposed of the suit with no order as to cost, hence the present appeal filed by the appellant.

We have heard the learned counsel for the parties and have gone through the record.

The facts of the case are not in dispute that the civil suit was pending before the learned Single Judge who disposed of the suit by allowing the plaintiff that they will be entitled to the amount deposited with the State Commission. The two pleas raised by the learned counsel for respondents No. 1 to 3(B) were firstly, that in view of the fact that the case was being compromised, the order was passed by the learned Single Judge in presence of the counsel for the plaintiff and he had never taken the plea that this amount was not acceptable to the bank, therefore, the suit stood satisfied and the plaintiff/bank was not entitled to any more amount. Secondly, that the order was not appealable under Section 96 and the decree was prepared wrongly by the office, and, therefore, the appeal is liable to be dismissed.

On the other hand, the submissions of the learned counsel for the appellant were that there has been no compromise in between the parties and the compromise has to be express and it should have been signed by the plaintiff or his counsel or their statements were required to be recorded by the learned Single Judge which was not done and it cannot be said to be a valid compromise under the provisions of Order 23. In regard to the second plea that the appeal was not maintainable, it was submitted that since the suit was finally disposed of vide the said impugned order and the decree was also drawn accordingly and, therefore, the appeal was maintainable under Section 96 C.P.C. read with Section 10 of the Delhi High Court Act.

On consideration of the impugned order, it is clear that while passing the said order for release of the amount lying in deposit with the H.P. Consumer Disputes Commission, the learned Judge had also ordered that the said amount be paid to the plaintiff/bank in full and final settlement of their claim in the present suit. A perusal of the previous order sheets passed by the learned Single Judge shows that the case was being fixed for reconciliation and in the reconciliation as per the proceedings in the case, this amount was ordered to be paid to the plaintiff/bank. However, there is no statement on record at any time made by the plaintiff or his counsel that they accept this amount in full and final settlement of the claim preferred by them in the present suit. Until and unless the statement was made by the plaintiff or his counsel accepting the amount in full and final settlement of their claim in the present suit, the suit could not have been disposed of as finally satisfied. The mere fact that the plaintiff's counsel was present on the day when the order was passed by the learned Single Judge, is not

sufficient to hold that the plaintiff or his counsel had agreed to the observations made by the learned Single Judge.

From above discussion, it follows that the order passed by the learned Single Judge disposing of the suit cannot be said to be a valid one since the plaintiff or his counsel never made any statement accepting the said amount in full and final settlement of their claim in the suit filed by them. Coming to the second question, since the suit finally stood disposed of by the impugned order and a decree sheet was also drawn accordingly, the present appeal was maintainable under Section 96 C.P.C. read with Section 10 of the Delhi High Court Act, 1966 and, therefore, the plea raised by the learned counsel for the respondents in this regard is repelled being devoid of any force.

In view of the above discussion, we accordingly set aside the order passed by the learned Single Judge disposing of the suit finally and the suit shall proceed further from the stage as if no order was passed on 17.11.1997 disposing of the suit. The pecuniary jurisdiction of the learned District Judge has been raised to Rupees Ten Lac and, therefore, the suit stands transferred to the Court of District Judge, Chamba for disposal in accordance with law. A copy of the judgment along with the record be sent to the said Court.

(V.K. Ahuja),
Judge

(Kuldip Singh),
Judge

April 20, 2007
(BSS)